IN THE

Supreme Court of the United States

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JOHN F. DAVIS, CLERK

Term, 196

No. 753

DANIEL KIRK, *Plaintiff and Appellant*

v.

CHARLES H. BOEHM, Superintendant of the Department of Public Instruction, Commonwealth of Pennsylvania, and The School Directors of the School District of Delaware County, Commonwealth of Pennsylvania, Namely: WILLIAM TAYLOR, JR., President, 608 Lawson Avenue, Havertown; PAUL M. SHIPLEY, Vice-President, 2130 Springhouse Lane, Chester; EDITH J. ZARR, Treasurer, 199 W. Dupont Avenue, Ridley Park; FREDERIC W. SWAMER, Box 259, R. F. D. 1, Boothwyn; BRUCE L. RITZ, 207 N. Providence Road, Media; RALPH L. ROGERS, 22 Ridgeway Avenue, Norwood; WILLIAM L. FRASCH, JR., 129 Golf Road, Lansdowne Park, *Defendants and Appellees.*

JURISDICTIONAL STATEMENT

Appeal from the Final Decree of the United States District Court for the Eastern District of Pennsylvania.

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1. The statement is submitted pursuant to Rule 15 of the Revised Rules of the Supreme Court of the United States.

(a) The opinion appealed from is reported in 216 F. Supp. 952 and is appended hereto.

(b) The jurisdiction of the Supreme Court of the United States is invoked on the following grounds:

(i) The Three-Judge District Court duly convened in this action pursuant to the provisions of 28 U. S. C. A. 2284 has denied appellant's petitions for preliminary and permanent injunctive and declaratory relief, entitling appellant thereby to an appeal as a matter of right. 28 U. S. C. A. 1253.

(ii) The dates of entry of the rulings sought to be reviewed are, respectively, May 1, 1963, and October 16, 1963, and the notice of appeal was filed in the United States District Court for the Eastern District of Pennsylvania on November 14, 1963.

(iii) See (i) supra.

(iv) The case presents a question of first impression as an original matter in the Federal Courts; however, the Supreme Court has sustained prior state court adjudications of guaranty clause claims. *Pacific States Telephone and Telegraph Co. v. Oregon*, 223 U. S. 118, 32 S. Ct. 224, 56 L. Ed. 377 (1912); 53 Or. 162, 99 Pac. 427; *Kadderly v. Portland*, 44 Or. 118, 74 Pac. 710, 75 Pac. 222. Section 4, Article IV, of the United States Constitution admittedly applies to the creation of, and the powers or rights of property of, the subordinate municipalities of a state. *Kies v. Lowrey*, 199 U. S. 233, 26 S. Ct. 27, 50 L. Ed. 167.

(v) The validity of the entire School Code of the Commonwealth of Pennsylvania is involved, 24 P. S. Sections 1-101, et seq.

By successfully raising the political question defense in the Three-Judge Court the defendants have drawn into question the constitutionality of the very statute giving such a district court original jurisdiction, which statute is designed for the purpose of contesting state action. 28 U. S. C. A. 1343.

(c) (1) The question raised by the appeal is:

Under a republican form of government does a state legislature have the power to delegate administrative authority to local and county school districts for the purpose of executing the provisions of the School Code separately from local and county self-governing political subdivisions of the state, and is the citizen's right to vote disparaged thereby?

(2) The question stated herein is deemed to embrace all questions stated in the notice of appeal.

(d) The Court may note that the separation of local and county government provided for in the School Code, and complained of, adversely and unconstitutionally affects the rights of local and county electorates and conditions generally in the state.

(e) Inapplicable.

(f) The question presented by this statement is so substantial as to require plenary consideration, with briefs on the merits and oral argument, for its resolution, inasmuch as the entire structure of state government, particularly at the local and county level, is in question, notwithstanding that defendants' failure to observe rule 16 of the local rules of the District Court deprived the parties of the benefit of the District Court's views thereon.

(g) Although the order for hearing was based upon a petition for preliminary injunction, no abuse of discretion was involved since the entire action was dismissed.

MOTION

The appellant respectfully prays that the Court waive the requirement to set forth the Pennsylvania School Code, because of its great length.

APPENDIX A

OPINION

Before KALODNER, Circuit Judge, CLARY, Chief Judge, and LUONGO, District Judge.

PER CURIAM.

In this action plaintiff challenges the constitutionality and seeks to enjoin the enforcement of an amendment to the Pennsylvania Public School Code of 1949 (24 P. S. §1-101 et seq.) on the ground that the amendment is contrary to Article IV, Section 4 of the United States Constitution. Article IV deals with the relationship between States and the United States. Section 4 thereof provides:

> "The United States shall guarantee to every State in this Union, a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence."

Defendants have moved to dismiss the complaint for failure to state a claim upon which relief can be granted. This three-judge District Court, convened pursuant to the provisions of 28 U. S. C. A. §2284, has concluded after due deliberation that the complaint raises a nonjusticiable political question and, therefore, must be dismissed for failure to state a claim upon which relief may be granted.

Article X, Section 1 of the Pennsylvania Constitution, P. S., requires that:

> "The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Com-

> monwealth above the age of six years may be educated, and shall appropriate at least one million dollars each year for that purpose."

Pursuant to that constitutional mandate the General Assembly has at various times enacted legislation culminating in the Public School Code of 1949. The Code deals with the public school system in detail and includes, inter alia, provisions for classifying school districts (24 P. S. §2-202).

The amendment which is being challenged here, Public Law 561 (Act of Sept. 12, 1961, P. L. 1283; 24 P. S. §§2-202, 2-283) provides for the reorganization of existing school districts in conformity with prescribed standards. There is no provision for the submission of the plans for reorganization to the electorate for approval. Plaintiff contends that the procedure for effecting reorganization violates *his* constitutional guarantee to a republican form of government in that he is denied the opportunity to vote on any plan of reorganization affecting the school district in which he resides.

Plaintiff's claim is based solely and exclusively on Article IV, Section 4 of the United States Constitution; it is not combined with and does not depend on any other constitutionally protected right, cf. Baker v. Carr, 369 U. S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962). As an exclusively Article IV, Section 4 claim, plaintiff's complaint raises a non-justiciable political question and must be dismissed. Baker v. Carr, supra; Highland Farms Dairy, Inc. v. Agnew, 300 U. S. 608, 57 S. Ct. 549, 81 L. Ed. 835 (1937); State of Ohio ex rel. Bryant v. Akron Metropolitan Park District, 281 U. S. 74, 50 S. Ct. 228, 74 L. Ed. 710 (1930); Mountain Timber Co. v. Washington, 243 U. S. 219, 37 S. Ct. 260, 61 L. Ed. 685 (1917); State of Ohio ex rel. Davis v. Hildebrant, Secretary of State of Ohio, 241 U. S. 565, 36 S. Ct. 708, 60 L. Ed. 1172 (1916); Marshall v. Dye, 231 U. S. 250, 34 S. Ct. 92, 58 L. Ed. 206 (1913); Pacific States Telephone & Telegraph Co. v. Oregon, 223

U. S. 118, 32 S. Ct. 224, 56 L. Ed. 377 (1912); Luther v. Borden, 7 How. 1, 48 U. S. 1, 12 L. Ed. 581 (1849).

ORDER

And now, this first day of May, 1963, it is ordered that the complaint be and it is hereby dismissed for failure to state a claim upon which relief may be granted.